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## **UNITED STATES INTERNATIONAL TRADE COMMISSION**

**19 CFR Parts 201, 206, 208, and 213, and 214 through 299**

**Rules of General Application; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions; Investigations with Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries; Trade Remedy Assistance**

**AGENCY:** International Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The United States International Trade Commission (“Commission”) amends provisions of its Rules of Practice and Procedure concerning the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance. The amendments are part of the agency’s retrospective analysis of its Rules that attempts to determine whether rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary, telephone (202) 205-2000, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General

information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

## **SUPPLEMENTARY INFORMATION:**

### Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure.

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with provisions of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

This rulemaking is a result of the Commission's Plan for Retrospective Analysis of Existing Rules, which was published on February 14, 2012, at 77 FR 8114. The plan was issued in response to Executive Order 13579 of July 11, 2011 (76 FR 41587, July 14, 2011), and established a process under which the Commission will periodically review its significant rules to determine whether any such rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The Commission's Plan calls for the agency to seek public input on its Rules every two years.

Pursuant to the Plan, the Commission published a notice of proposed rulemaking on February 6,

2015 (80 FR 6665). This notice proposed certain amendments to the Commission's Rules. The proposed amendments concerned the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance. The notice also sought input to assist the Commission in determining whether, in addition to the proposed amendments, any of the agency's Rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The public was invited to comment both on the proposed amendments and on any of the Commission's existing Rules.

The Commission received comments in response to the notice of proposed rulemaking. By letter dated April 6, 2015, the Customs and International Trade Bar Association (CITBA) filed comments and a request to revise the Commission's Handbook on Filing Procedures dated August 8, 2014.

In its comments, CITBA stated that the Commission's approach of requiring the filing of both paper copies and electronic copies is burdensome on submitters and causes confusion and complications for both the agency and private parties. Citing the practices of the Department of Commerce and the U.S. Court of International Trade, CITBA urged the Commission to modify its procedures and revise the Handbook to eliminate the requirement that paper copies be submitted when filing electronically. In the alternative, CITBA urged the application of a "lag rule" to allow parties to file paper copies the next business day after electronic filing.

The Commission discussed similar concerns in its final rulemaking notice of June 25, 2014 (79 FR 35920). That notice acknowledged that there is a trend toward greater electronic filing in agency and court proceedings. The notice concluded that, for the time being, the Commission and its staff would need to continue to rely on receiving paper copies of documents in light of the tight deadlines and voluminous factual records entailed by its investigations and other proceedings, as well as the constraints of current technology and the Commission's ability to adopt new technology given

budgetary restrictions. The situation has not changed materially since that time, and therefore the Commission is not yet in a position to change its practice with respect to paper and electronic filing. The Commission will continue to monitor requirements pertaining to filing of documents as technology develops.

A comment was received from the National Archives and Records Administration's Office of Government Information Services (OGIS). OGIS commended the Commission for proposing updates to make its Freedom of Information Act (FOIA) regulations more consistent with the OPEN Government Act of 2007. OGIS recommended that the Commission expand its rulemaking to cover additional changes to the law made by that statute, including recognizing the right of FOIA requesters to seek mediation services from OGIS as a non-exclusive alternative to litigation.

OGIS suggested defining certain terms for clarity; referencing the processes for tracking and referring requests; explaining the intersection between FOIA and the Privacy Act; providing that oral requests are not permitted; adding details on what information is provided when requests are denied and how fees are charged; describing how FOIA records are preserved; and providing web links to the agency's hearing reporter and to the agency's publications. OGIS recommended that a requester not be required to specify that his or her request is made under FOIA.

The Commission is adopting most of OGIS' suggestions in the final amendments set out below. In most changes, statutory language is summarized rather than reproduced in its entirety. The Commission is not adopting the suggestion that the rules no longer require a requester to indicate that the request is made under FOIA. Agency personnel receive a substantial number of informal requests that are handled without the need to go through the FOIA process. The Commission believes that it would be neither necessary nor practical to consider all such requests as being made under FOIA.

OGIS suggested providing a web link to the agency's hearing reporter. Because the Commission obtains court reporting by contract, the identity of the reporter may change over time, and is therefore not information that the Commission considers to be appropriate for inclusion in its Rules.

OGIS suggested that the Commission provide requesters with an estimated amount of fees, including a breakdown of the fees for search, review and/or duplication. The Commission rarely finds it necessary to charge FOIA fees. When a fee is charged, the Secretary attempts to provide as much information on the fees as practicable, but a detailed estimate and breakdown may not always be possible.

The Commission received an additional comment that did not pertain to the subject matter of the notice of proposed rulemaking.

The amendments set out in this final rulemaking notice correspond to the ones that were proposed in the notice of proposed rulemaking published on February 6, 2015, with additional changes to respond to comments received. The notice of proposed rulemaking described most of the proposed amendments in a section-by-section analysis, and those amendments have not changed. With respect to the remainder of the amendments, which were prepared in response to OGIS' comments, the following sets out a section-by-section analysis.

Section 201.17 is revised to specify in paragraph (a)(5) the online location of the Commission's publications. The section is further amended to add paragraph (d) that provides information on how requests are tracked and how a requester can contact the Commission's FOIA Public Liaison. Paragraph (e) is added to clarify the relationship between FOIA and the Privacy Act. A new paragraph (f) describes the agency's procedure for referring FOIA requests to another agency. A new paragraph (g) covers records management matters, including the preservation of records relating to FOIA requests until disposition or destruction is authorized or until litigation is concluded. In section 201.18, paragraph (a)

is amended to clarify that a FOIA request cannot be oral, and to describe what information is provided in a denial of a request. A new paragraph (f) provides for responses to FOIA appeals to make reference to the services offered by OGIS.

In section 201.20, paragraphs (j)(9) and (j)(10) are added to clarify the FOIA fee process by defining the terms “requester category” and “fee waiver.”

In addition to publishing rules amendments in final form, the Commission expects to continue taking other steps to implement its Plan for Retrospective Analysis of Existing Rules to ensure that its Rules are kept up to date. Notably, the Commission’s General Counsel has asked the Commission’s Secretary, office directors, and administrative law judges for input on rules suitable for modification or elimination. The General Counsel’s office will make recommendations to the Commission as necessary regarding the possible modification or elimination of existing regulations. Once an appropriate rule change has been identified, the Commission will publish a notice of proposed rulemaking and solicit public comment on the proposed change.

#### Regulatory Analysis of Amendments to the Commission's Rules

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, the rules are certified as not having a significant economic impact on a substantial number of small entities.

The rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because these amended rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The Commission has determined that these amended rules do not constitute a “significant regulatory action” under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993).

The rules do not have Federalism implications warranting the preparation of a federalism summary impact statement under Executive Order 13132 (64 FR 43255, August 4, 1999).

The amendments are not “major rules” as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et. seq.). Moreover, they are exempt from the reporting requirements of the Act because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 19 CFR Parts 201, 206, 208, and 213

Administrative practice and procedure; imports; foreign trade.

For the reasons stated in the preamble, under the authority of 19 U.S.C. 1335, the United States International Trade Commission amends 19 CFR parts 201, 206, 208, and 213 as follows:

## **PART 201--RULES OF GENERAL APPLICATION**

1. Revise the authority citation for part 201 to read as follows:

Authority: 19 U.S.C. 1335; 19 U.S.C. 2482, unless otherwise noted.

2. In § 201.17, revise paragraph (a)(5) and add paragraphs (d) through (g) to read as follows:

**§ 201.17 Procedures for requesting access to records.**

(a) \* \* \*

(5) Copies of public Commission reports and other publications are available online at [http://www.usitc.gov/publications/by\\_type.htm](http://www.usitc.gov/publications/by_type.htm), or can be requested by calling or writing the Office of the Secretary. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

\* \* \* \* \*

(d) *Acknowledgment.* The Secretary will provide to a requester an acknowledgment of the receipt of a request and an individualized tracking number for each request. The requester may obtain information about the status of the request and/or contact the Commission's FOIA Public Liaison by telephone (202-205-2595) or e-mail ([foia.se.se@usitc.gov](mailto:foia.se.se@usitc.gov)). The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(e) *First-party requests.* The FOIA applies to third-party requests for documents concerning the general activities of the government and of the Commission in particular. When a U.S. citizen or an alien lawfully admitted for permanent residence requests access to his or her own records, i.e., makes a first-party request, it is considered a Privacy Act request. Although requests are considered either FOIA requests or Privacy Act requests, the Commission processes first-party requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.



(f) *Referrals*. If the Secretary refers a request or a portion thereof to another agency, the Secretary will notify the requester of the referral and the part of the request that has been referred. If feasible, the Secretary will provide the requester with a point of contact within the receiving agency regarding the referral.

(g) *Records management*. (1) The Secretary shall preserve all correspondence pertaining to requests received as well as copies of all requested records, until disposition or destruction is authorized by a General Records Schedule of the National Archives and Records Administration (NARA) or other NARA-approved records schedule.

(2) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition under a General Records Schedule or other NARA-approved records schedule.

3. In § 201.18, revise paragraph (a) and add paragraph (f) to read as follows:

**§ 201.18 Denials of requests, appeals from denial.**

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. A denial shall be in writing and shall provide information on the exemptions that justify withholding and the amount of information withheld. The denial also shall advise the person requesting of the right to appeal to the Commission.

\* \* \* \* \*

(f) A response to an appeal will advise the requester that the Office of Government Information Services offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

4. In § 201.19, revise paragraph (f) to read as follows:

**§201.19 Notification regarding requests for confidential business information.**

\* \* \* \* \*

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed by a deadline set by the Secretary, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of §201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

\* \* \* \* \*

5. In § 201.20, revise paragraph (j)(8) and add paragraphs (j)(9) and (10) to read as follows:

**§201.20 Fees.**

\* \* \* \* \*

(j) \* \* \*

(8) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive.

Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(9) The term *requester category* means one of the three categories that requesters are placed in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(10) The term *fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

\* \* \* \* \*

6. In § 201.23, revise paragraph (e) to read as follows:

**§ 201.23 Definitions.**

\* \* \* \* \*

(e) The term Privacy Act Officer refers to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

7. In § 201.34, revise paragraph (a)(3) to read as follows:

**§ 201.34 Definitions.**

\* \* \* \* \*

(a) \* \* \*

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action, and where the deliberations of the Commissioners determine or result in the joint conduct or disposition of official Commission business.

\* \* \* \* \*

**PART 206 -- INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS**

8. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251-2254, 2436, 2451-2451a, 3351-3382, 3805 note, 4051-4065, and 4101.

9. Revise § 206.2 to read as follows:

**§ 206.2 Identification of type of petition or request.**

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case maybe, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof “This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.” A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the document shall be filed in electronic form on CD–ROM, DVD, or other portable electronic format approved by the Secretary.

**PART 208 -- [REMOVED AND RESERVED]**

10. Under the authority of 19 USC 1335, remove and reserve part 208.

**Subchapter D – Special Provisions**

11. Under the authority of 19 USC 1335, add subchapter D with the heading set forth above, and transfer part 213, consisting of §§ 213.1 through 213.6, and reserved parts 214 through 299 into it.

**PART 213 -- TRADE REMEDY ASSISTANCE**

12. Revise the authority citation for part 213 to read as follows:

Authority: 19 U.S.C. 1335, 1339.

13. In § 213.2, revise paragraphs (d) through (g) to read as follows:

**§ 213.2 Definitions.**

\* \* \* \* \*

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice, provided under 19 U.S.C. 1339(b) and intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints and to seek to obtain the remedies and benefits available under the trade laws identified in §213.2(b).

Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in §213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for technical assistance under this part.

(f) *Eligible small business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance under 19 U.S.C. 1339(b) in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards*. The Office has adopted for its use SBA size standards, which are the small business size standards of the Small Business Administration set forth in 13 CFR part 121.

14. In § 213.3, revise paragraph (a) to read as follows:

**§ 213.3 Determination of small business eligibility.**

(a) *Application for technical assistance from small businesses*. An applicant for technical assistance under 19 U.S.C. 1339(b) must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office and on the Commission's website. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in §213.2(a).

\* \* \* \* \*

15. Revise § 213.6 to read as follows:

**§ 213.6 Information concerning assistance.**

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Information is also provided on the Commission's website at <http://www.usitc.gov>.

By order of the Commission

William R. Bishop

Supervisory Hearings and Information Officer

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